

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Notice of Non-Compliant Amendment dated April 29, 2009. Applicant herein corrects the remarks to indicate that claims 49, 52, 55 and 57 are canceled without prejudice or disclaimer. As such, claims 13-18, 20-22, 24-39, 45-48, 50-51, 53-54, 56 and 58-59 are all the claims currently pending in the application. Applicant submits that other than correcting the pending claims, there are no differences between this Amendment and the Amendment filed on January 15, 2009 and no new matter is added. For the Examiner's convenience, the relevant portions of the Amendment filed on January 15, 2009 are reproduced below.

With this Amendment, Applicant amends claims 13, 14, 16, 17, 18, 20, 22, and 24 and cancels claims 49, 52, 55, and 57 without prejudice or disclaimer. No new matter is added. Support for the amendments to claims 13, 14, 17, 18 and 20 may be found at least on page 8, lines 6-28 and page 9, lines 4-10 of the originally-filed specification. Based on the foregoing amendments and the following remarks, Applicant respectfully requests reconsideration of the application and allowance of the claims.

I. Rejection of Claim 13 Under 35 U.S.C. § 102(e)

Claim 13 is rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Lebel, et al. (U.S. Pat. Publ. No. 2003/0009203; hereinafter "Lebel").

Claim 13 recites "[a]n apparatus comprising, a processor configured to: generate content comprising validation data and other data which comprises software, ...; download the content to a terminal, ... the validation data of the content downloaded from the apparatus being configured to permit the terminal to determine whether the content was securely downloaded and that the content originated from the apparatus, wherein the processor is configured to download the content by downloading the validation data and the other data concurrently from the apparatus together in a single download file, and wherein the *validation data* comprises *a download transport protocol header and mime data* which *identifies the content and a type of the software*, wherein the terminal is configured to further *evaluate the mime data to determine whether the content is correct* and *evaluate the header to determine whether the apparatus is an authorized apparatus which is a source for downloading the content*."

Applicant submits that Lebel does not teach or suggest all of the above features of claim 13. In rejecting claim 13, the Examiner relies on the abstract, and paragraphs [0017], [0021], [0125], [0126], [0141], [0142], [0143], [0145], [0156] and [0159] of Lebel as allegedly disclosing features of claim 13. In contrast to amended claim 13, the cited portion and indeed all of Lebel, at best, discloses an external communication device 32 that communicates with an implanted medical device 2 via telemetry. Lebel describes that the implanted medical device 2 and the external communication device 32 may exchange messages between each other. (paragraphs [0052] & [0054]) The cited portion of Lebel also, at best, explains that the messages therein are transmitted using a multipart format that includes a preamble, a frame sync, a telemetry ID, data and a validation code. (Abstract & paragraph [0078]) Lebel explains that the data may be used to download new software to the communication device or the medical device. (paragraph [0053])

However, nowhere in the cited portion, or any other portion, of Lebel is there any mention teaching or suggestion relating to any validation data that “comprises *a download transport protocol header and mime data*,” as claimed. And there certainly is no mention, teaching or suggestion in Lebel relating to any validation data which *identifies the content and a type of ... software*, wherein [a] terminal is configured to further *evaluate the mime data to determine whether the content is correct and evaluate the header to determine whether the apparatus is an authorized apparatus which is a source for downloading the content*,” as required by amended claim 13. Rather, Lebel is altogether silent and does not contemplate any validation data that comprises a download transport protocol header and mime data that is used to identify a type of software and to determine whether the content is correct and whether an apparatus is an authorized apparatus that is a source for downloading content, as required by claim 13.

Based on at least the foregoing, Applicant submits that Lebel is deficient and does not teach or suggest all of the features of claim 13. Applicant therefore respectfully requests the Examiner to reconsider and withdraw the § 102(e) rejection of claim 13.

II. Rejection of Claims 14-18, 20-22, 24-39 and 47-58 Under 35 U.S.C. § 103(a)

Claims 14-18, 20-22, 24-39, and 47-58 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Lebel, in view of Gurevich, et al. (U.S. Pat. Publ. No. 2002/0178370; hereinafter Gurevich)

Claim 14 recites “[a]n apparatus comprising a processor configured to: request and download content, which comprises validation data and other data comprising software, from a server; ... determine whether the content was securely downloaded from the server and whether the content originated from the server, wherein the validation data and the other data are downloaded concurrently from the server together in a single download file and, wherein the validation data comprises a download transport protocol header and mime data which identifies the content and a type of the software, wherein the processor is further configured to evaluate the mime data to determine whether the content is correct and evaluate the header to determine whether the apparatus is an authorized apparatus which is an approved source for downloading the content.”

Applicant submits that the combination of Lebel and Gurevich does not teach or suggest all of the above features of amended claim 14. In rejecting claim 14, the Examiner correctly concedes that Lebel does not teach or suggest all of the features of claim 14. However, the Examiner relies on Gurevich to make up for the deficiencies of Lebel. More particularly, the Examiner merely relies on Gurevich as alleging teaching a “server for efficient downloading of content”. (See pg. 3 of the Office Action) Even assuming *arguendo* that the Gurevich discloses a server capable of downloading data the combination still does not teach or suggest the features of amended claim 14 given that Lebel fails to teach or suggest any “*validation data [that] comprises a download transport protocol header and mime data which identifies the content and a type of the software*, wherein the *processor* is further configured to *evaluate the mime data* to determine whether the *content is correct* and *evaluate the header* to determine whether the apparatus is an *authorized apparatus* which is an *approved source for downloading the content*,” as claimed, and Gurevich fails to make up this deficiency of Lebel, even when combined with Lebel.

Based on at least the foregoing, Applicant submits the combination of Lebel and Gurevich is deficient and does not teach or suggest all of the features of claim 14. Applicant

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therefore respectfully requests the Examiner to reconsider and withdraw the § 103(a) rejection of claim 14 and its dependent claims 21, 22, 24, 31, and 36.

Since independent claims 17, 18, and 20 contain features that are analogous to, though not necessarily coextensive with the features recited in claim 1, Applicant submits that independent claim 17 and its dependent claims 27, 32, and 37 as well as independent claim 18 and its dependent claims 28, 33 and 38 as well as independent claim 20 and its dependent claims 29, 34 and 39 are patentable at least for reasons analogous to those submitted for independent claim 14.

III. Rejection of Claims 45, 46, and 59 Under 35 U.S.C. § 103(a)

Claims 45, 46 and 59 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Lebel, in view of Gurevich and Nonaka, et al. (U.S. Pat. No. 7,073,073). Applicant respectfully traverses this rejection for at least the following reasons.

As discussed above, Lebel and Gurevich, alone or in combination, is deficient and Nonaka does not make up for the deficiencies of Lebel, alone or in combination with Gurevich. As such, claims 45, 46 and 59 are patentable at least by virtue of their respective dependencies from claims 13 and 20. Applicant therefore respectfully requests the Examiner to reconsider and withdraw the § 103(a) rejection of dependent claims 45, 46 and 59.

IV. Conclusion

In view of the foregoing remarks, Applicant respectfully submits that all of the claims of the present application are in condition for allowance. It is respectfully requested that a Notice of Allowance be issued in due course. Examiner Sax is encouraged to contact Applicant's undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fee

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required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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